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Attorney for Defendant RUSSELL TAYLOR OTT

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

No. CR 17 533 EMC

Plaintiff,

**TRIAL GROUP ONE JOINT
OBJECTION TO TRIAL EXHIBITS FOR
APRIL 25, 2022**

v.

RUSSELL TAYLOR OTT,

Defendant.

**TO: THE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF
CALIFORNIA; ASSISTANT UNITED STATES ATTORNEYS KEVIN BARRY,
AJAY KRISHNAMURTHY AND LINA PENG; AND TO THE CLERK OF THE
ABOVE-ENTITLED COURT:**

On April 21, 2022 the government provided notice to Nelson Trial Group One that it intends to call a series of witnesses (Brittany Tolman, Beth Alvarez, Stacy Silva, Stevie Silva, Richard Fenton, Stephen Mertz, and Joseph Atneosen) and introduce approximately 25 exhibits. (United States' Witness and Exhibit List: April 25, 2022)

**TRIAL GROUP ONE JOINT OBJECTION
TO TRIAL EXHIBITS (4/25/22)**

1 All defendants objects to the admission of part or all of exhibits listed below, associated
 2 with the identified witness, based on the stated grounds. Separate pleadings have been filed on
 3 behalf of all defendants regarding Exhibits GX 1423, GX 151, and GX 152, to be introduced
 4 through witnesses Stacy Silva and Stevie Silva, and Joseph Atneosen. (ECF Nos. 2599, 2603)

5 **WITNESS BRITTANY TOLMAN**

6 Exhibits: GX 58 (culled), 980, 183, 185, 1413, 589, 619, 680, 684, 713, 788, 795, 804, 800, 817,
 7 840, 842, 849.

8 All of these exhibits are either groups of photographs or single photographs. Various
 9 objections are noted below.

10 GX 58 - This exhibit is 169 photos (after culling) of a residence connected to defendant
 11 Russell Lyles. This particular exhibit was one of the defense “bellwether” exhibits, and was
 12 discussed earlier in the week. The parties were asked to meet and confer regarding the exhibit.
 13 An email was sent to the government noting objections to particular photographs (HA-
 14 0026727,HA-0026735 - 0026742, HA-0026743) on April 20, 2022, and the defense has yet to
 15 receive a response. Beyond objections to the specifically identified photographs based on FRE
 16 and 403 grounds, the defense objects to the large set of photos as cumulative.

17 GX 980 (HA-00134573 - HA-134584). GX 980 is the grand jury testimony of Brittany
 18 Tolman. The identified Bates numbers are 11 photos attached as exhibits to the grand jury
 19 testimony. The defense objects to the admission of the photos until foundation for the exhibits is
 20 established.

21 GX 183, 184, 185. These exhibits are each single photos showing multiple Hells Angels
 22 members, including some of the defendants. The defense objects on foundation grounds.

23 GX 1413. This is a recently produced exhibit consisting of over 25 separate photos
 24 labeled “Selected HASC Photos”¹. Each photos is a single PDF, with the exception that one PDF
 25 contains 3 photos. The photos show a wide variety of individuals in a variety of locations (e.g. a
 26

27 ¹ The first of these photos is also GX 193, which was excluded earlier today based on late
 28 disclosure for the witness testifying today.

wedding, a funeral, a cemetery photos, a prison photo). A couple of the photos have a date, but most do not. The defense objects to the admission of the wholesale group of photos until foundation for each of the individual photos is established.

GX 589, GX 619, GX 680, GX 684, GX 713, GX 788, GX 795, GX 804, GX 800, GX 817, GX 840, GX 842, GX 849. Each of these exhibits is a separate photo that was apparently found on electronic devices allegedly connected to defendants Damien Cesena and Russell Lyles. The first two photos were reportedly found on a hard drive connected to Damien Cesena, and the others are connected to either a hard drive or laptop associated with Russell Lyles. The defense objects to the admission of the wholesale group of photos until foundation for each of the individual photos is established. There are underlying issues relating to the specifics of the electronic devices, the context of the various files/photos, and metadata associated with the files/photos. The defense also objects to two of the photos on FRE 403 grounds, HA-00001309 (funeral photo) and HA-00001323 (prison photo). It is also noted that at some point the repeated introduction of photographs of individual members becomes cumulative.

GX 680 and GX 842. Group One lodges a separate objection to these two exhibits as being cumulative and unduly prejudicial due to their visual depiction of irrelevant depictions of what appears to be nitrous oxide possession by various individuals.

WITNESS BETH ALVAREZ

Exhibits: GX 1415

This exhibit consists of 190 photos of another residence connected to Russell Lyles. The defense objects on the basis that the majority of the photos are irrelevant and cumulative, and the set of photos should be substantially culled. In addition, the defense objects to four specific photos, HA-00046063 (Confederate flag), HA-00046142 (White Power), HA-00046158 (Nazi flag), and HA-00046171 (framed "Wanted" poster).

WTNESSES RICHARD FENTON AND STEPHEN MERTZ

Exhibits GX 1, 1414, 976, 572, 580, 616, 619, 620, 632, 634, 669.

1 For the most part these photos relating to the two witnesses overlap, and consist of
 2 various photos that include an image of Joel Silva, with the exception of GX 1414 and GX 976
 3 (HA-00134379), which are pictures of a motorcycle. The foundation for GX 1414 and GX 976
 4 has not been established.² The defense objects to the admission of the wholesale group of photos
 5 until foundation for each of the individual photos is established. There are underlying issues
 6 relating to the specifics of the electronic devices, the context of the various files/photos, and
 7 metadata associated with the files/photos. The defense also objects to two of the photos on FRE
 8 403 grounds, HA-00001309 (funeral photo) and HA-00001323 (prison photo). It is also noted
 9 that at some point the repeated introduction of photographs of alleged victim Joel Silva becomes
 10 cumulative. The defense is not disputing his standing as an active HASC member in 2014.

11 The photos other than GX1414 all appear to be derived from three separate hard drives
 12 allegedly connected to defendant Damien Cesena.

13
 14 Dated: April 22, 2022

Respectfully submitted,

15 /s/
 16 ROBERT F. WAGGENER
 17 MARCIA M. MORRISSEY
 18 Attorneys for Russell T. Ott
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 27 ² GX 976 is the grand jury testimony of witness Stephen Mertz. HA-00134379 is one of
 28 three photos of motorcycles, the first two being the two photos in GX 1414, that are attached as
 exhibits to the grand jury testimony of Mr. Mertz.